

# Disciplinary Actions

## REPORTED FOR DECEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of November 2002.

### Firms Fined, Individuals Sanctioned

**Ameriprop, Inc. (CRD #24305, Melville, New York) and Steven Douglas Klein (CRD #1940511, Registered Principal, North Babylon, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Klein was also prohibited from acting as an investment company and variable contracts products principal until he becomes duly licensed as an investment company and variable contracts products principal or as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Klein, allowed an individual associated with the firm to engage in the sale of Direct Participation Programs while he was not properly registered with NASD. The findings also stated that the firm allowed Klein to act as a principal in investment company and variable contracts products while not registered with NASD in that capacity. **(NASD Case #CL1020009)**

**Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey) and Joseph Thomas Zappala (CRD #475869, Registered Principal, Pilesgrove, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Zappala was fined \$5,000, suspended from association with any NASD member in any principal capacity for 90 days, and required to requalify as a general securities principal (Series 24). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zappala, failed to enforce its written supervisory procedures regarding the review of incoming correspondence. Specifically, the firm's supervisory procedures required all incoming correspondence to be opened and reviewed by a principal or designee immediately upon receipt. However, a registered representative of the firm received customer redemption checks issued by a mutual fund worth approximately \$282,000, made payable to the mutual fund customers "in care of" the registered representative, who never gave the checks to the customers and, instead, converted the funds for personal use.

Zappala's suspension began December 2, 2002, and will conclude March 1, 2003. **(NASD Case #C9B020075)**

## Firms Fined

**E\*Trade Securities, Inc. (CRD #29106, Rancho Cordova, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$155,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report e-mail and written customer complaints in its quarterly statistical report to NASD. The findings also stated that the firm failed to establish written supervisory procedures that were reasonably designed to ensure that customer complaints received via e-mail were properly reported, and thereby failed to supervise adequately the reporting of such complaints. In addition, NASD found that the firm filed reports of arbitration awards or settlement agreements late, failed to maintain books and records in connection with an initial public offering, failed to maintain e-mail and customer profiles, and failed to maintain evidence of reconfirmations of interest from public customers. Furthermore, the findings stated that the firm failed to provide accurate and complete information to NASD. NASD also found that the firm failed to register as an authorized Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) participant, and failed to report FIPS high-yield and mandatory bond transactions within five minutes. **(NASD Case #C01020016)**

**Forge Financial Group, Inc. (CRD #100020, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last-sale reports of transactions in OTC Equity, NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>), NASDAQ SmallCap<sup>SM</sup> (SC<sup>SM</sup>), and Consolidated Quotation Service (CQS) securities. The findings also stated that the firm failed to designate through ACT such last-sale reports as late and incorrectly designated as ".T," through ACT, last-sale reports of transactions in OTC Equity, NNM, and SC securities executed during normal market hours. In addition, NASD found that the firm failed to report the time of execution through ACT in late, last-sale reports of transactions in NNM, SC, and eligible securities. **(NASD Case #CMS020196)**

**Nova Fund L.P. (CRD #35302, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures concerning the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit to OATS required information during the review period. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and the Rules of NASD concerning OATS. **(NASD Case #CMS020183)**

**Prudential Securities, Inc. (CRD #7471, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to undertake to withdraw any New York choice-of-law defense asserted in any pending arbitration, not to assert a New York choice-of-law defense in any future arbitration proceeding, and to instruct all in-house and outside attorneys representing the firm in arbitration proceedings not to assert a New York choice-of-law defense. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in arbitration proceedings filed with NASD, it had public customers sign a customer agreement stating that the terms of the agreement would be governed by the laws of the State of New York. The findings also stated that the firm asserted that New York law applied to the proceedings by virtue of the governing law clause in the customer agreement, and that New York law precluded an award of punitive damages or attorney fees. **(NASD Case #CAF020052)**

**Schneider Securities, Inc. (CRD #16434, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to update or amend Forms U-4 and U-5 for registered representatives after becoming aware of information that triggered an obligation to update or amend the forms. The findings also stated that the firm's written supervisory procedures were not reasonably designed to ensure that Forms U-4 and U-5 were promptly updated or amended upon the receipt of information triggering an obligation to update or amend the forms. In addition, NASD found that the firm's written supervisory procedures failed to identify the individual responsible for compliance in this area. **(NASD Case #C3A020048)**

**Stifel, Nicolaus & Company, Incorporated (CRD #793, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. **(NASD Case #CMS020185)**

**Wachovia Securities, Inc. (CRD #19616, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its

public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS020202)

**WIEN Securities Corporation (CRD #10467, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet but, within 30 seconds of receiving such messages, failed to fill the incoming trade-or-move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. The findings also stated that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. NASD also found that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS020192)

**Wilson-Davis & Co., Inc. (CRD #3777, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$36,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale orders and transactions in certain securities and failed to maintain a written record of the affirmative determination made for such orders; failed to make an affirmative determination prior to executing such transactions; and failed to report these transactions to ACT with a short-sale modifier. NASD also found that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or original capacity, and transmitted through ACT last-sale reports of transactions in OTC Equity Securities and failed to designate through ACT such last-sale reports as reflecting a price different from the current market when the execution was based on a prior reference point in time.

The findings also stated that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid

or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. In addition, NASD found that the firm failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. Furthermore, the findings stated that the firm was a market maker in securities, and an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size and failed to execute the orders upon presentment and thereby failed to honor its published quotation. NASD determined that the firm, within 90 seconds after execution, failed to transmit through ACT last-sale reports of transactions in OTC Equity securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS (accuracy and date submitted), best execution (three-quote rule), Section 21(a) Issues (anti-coordination and anti-intimidation), and Trade Reporting. (NASD Case #CMS020187)

**Win Capital Corp. (CRD #36172, Bayville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$21,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it served as placement agent for a "minimum-maximum" "best-efforts" private placement offering of securities and, during the contingency period of the offering, failed to ensure that the money or other consideration it received was promptly transmitted to a bank that had agreed in writing to hold such funds in escrow for the persons who had the beneficial interests therein, and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency had occurred. The findings also stated that the firm executed short-sale transactions on an agency basis as the order entry firm and the contra party to the transaction, and failed to accept the transaction in ACT with the ".S" short-sale indicator.

NASD also found that the firm executed short-sale transactions on a principal basis as market maker, and failed to designate the transactions using the ".X" short-sale exempt modifier. In addition, NASD found that the firm failed to report principal transactions to ACT within 90 seconds in NNM securities, a NASDAQ SC security; and Over-the-Counter Bulletin Board (OTCBB) securities; and, in some of the transactions reported late, the firm failed to report the transactions using the ".SLD" late transaction modifier. NASD found that the firm failed to report to ACT the correct volume of principal transactions in OTCBB and NNM securities. Furthermore, NASD found that the firm failed to execute sell limit orders within 60 seconds of the time the limit orders became marketable, thereby

failing to use reasonable diligence to ascertain the best inter-dealer market for the subject security, and to sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. (NASD Case #CLI020010)

## Individuals Barred or Suspended

**Dennis O. Ayers (CRD #2197712, Registered Representative, Mountainside, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ayers consented to the described sanction and to the entry of findings that he improperly obtained \$20,138 from his member firm by submitting expense reports that overstated his actual expenses. (NASD Case #C9B020074)

**Arthur George Baker, Jr. (CRD #851291, Registered Principal, Colts Neck, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for 15 business days. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he failed to adequately and properly supervise a representative's unauthorized trading activity in public customers' accounts. The findings also stated that Baker failed to file with NASD information on behalf of a former member firm relating to a claim for damages by a public customer that Baker agreed to settle on behalf of the firm.

Baker's suspension began December 2, 2002, and will conclude at the close of business December 20, 2002. (NASD Case #C9B020077)

**Michael Aaron Bodack (CRD #2903421, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Bodack consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to provide written notification to, or receive written approval from, his member firm.

Bodack's suspension began November 18, 2002, and will conclude August 17, 2003. (NASD Case #C10020104)

**Edward Eyden Breeden (CRD #2954280, Registered Representative, Santa Cruz, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Breeden

reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Breeden consented to the described sanctions and to the entry of findings that he signed the names of public customers on "Alternate Mail Instructions" forms corresponding to the customers' accounts with his member firm without the customers' knowledge or authorization.

Breeden's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C01020017)

**Mark Dennis Capaz (CRD #2905520, Registered Representative, Tampa, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Capaz engaged in outside business activity, for compensation, and failed to provide prior written notice to his member firm. The findings also stated that Capaz failed to respond to NASD requests for information. (NASD Case #C07020030)

**Marcus Luis Carrasquillo (CRD #2954752, Registered Representative, Ozone Park, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Carrasquillo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carrasquillo consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U-4.

Carrasquillo's suspension began November 4, 2002, and will conclude at the close of business December 18, 2002. (NASD Case #C10020101)

**Antonio Costanzo (CRD #2233347, Registered Representative, Wayne, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Costanzo consented to the described sanction and to the entry of findings that he effected transactions in public customers' accounts without the customers' prior knowledge, authorization, or consent. (NASD Case #C9B020078)

**Calvin Wayne Culbertson (CRD #2598645, Registered Representative, Ocala, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Culbertson failed to respond to NASD requests for information. The findings also stated that Culbertson engaged in a private securities transaction, for compensation, and failed to provide prior written notice to, or receive prior written approval from, his member firm. (NASD Case #C07020051)

**Charles Philip Damico (CRD #60413, Registered Principal, Bryn Mawr, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Damico consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the normal course or scope of his association with a member firm, and failed to provide the firm with prior written notice of the transactions. The findings also stated that Damico failed to respond to NASD requests for information and documents. **(NASD Case #C9A020049)**

**William Hubert Davis (CRD #62734, Registered Representative, Claremont, California)** submitted an Offer of Settlement in which he was fined \$5,700, including \$700 in commissions received by Davis, and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Davis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior written notification to his member firm.

Davis' suspension began November 18, 2002, and concluded at the close of business December 2, 2002. **(NASD Case #C01020013)**

**Michael Joseph Dinunzio (CRD #2180180, Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Dinunzio reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dinunzio consented to the described sanctions and to the entry of findings that he settled a customer complaint without the consent or knowledge of his member firm, and failed to report promptly to his member firm the existence of any claim for damages by a public customer that is settled for an amount exceeding \$15,000.

Dinunzio's suspension began November 18, 2002, and concluded at the close of business December 9, 2002. **(NASD Case #CAF020051)**

**Frank Darnell Fisher, Jr. (CRD #2642052, Registered Representative, Vacaville, California)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 20 business days, suspended from recommending the purchase of any penny stock to public customers for one year, and required to requalify by passing the Series 7 general securities representative exam within 90 days from his reassociation following the 20-business-day suspension. In light of the financial status of Fisher, no

monetary sanctions have been imposed. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock to public customers for which he received a bonus totaling \$96,000, and failed to disclose to customers that he was receiving a bonus and that it was in the form of a commission or sales credit amounting to 33 percent of the retail sales price. NASD also determined that Fisher knew, or should have known, based on a comparison of the amount of the bonus offered by this member firm to the retail sale prices charged to his customers, that such prices were excessive and unfair.

The findings also stated that Fisher was reckless in not knowing that these bonuses represented material financial self-interests in stock that was required to be disclosed to customers. In addition, NASD found that Fisher recommended the purchase of penny stocks to public customers, and failed to furnish customers, prior to effecting such transactions, a risk disclosure document containing information required by penny stock rules; failed to obtain from customers a manually signed and dated written statement acknowledging receipt of such risk disclosure document prior to effecting transactions; failed to disclose to customers, either orally or in writing, the inside bid and offer quotations prior to effecting transactions, and failed to provide the same in writing at or prior to the time of any written confirmation sent to the customer pursuant to Securities and Exchange Commission (SEC) Rule 10b-10; and, prior to effecting such transactions, failed to disclose the aggregate amount of cash compensation received or to be received from any source in connection with the transaction, including separate disclosure of the source and amount of such compensation not paid by the broker or dealer, and failed to provide the same in writing at or prior to the time of any written confirmation sent to the customer pursuant to SEC rule 10b-10. Furthermore, NASD found that Fisher failed to keep and preserve records of such disclosures as required by penny stock rules.

Fisher's suspensions began November 18, 2002, and the suspension from association with any NASD member in any capacity will conclude at the close of business December 16, 2002. The suspension from recommending the purchase of any penny stock to public customers will conclude at the close of business November 17, 2003. **(NASD Case #CMS020090)**

**Marc Anthony Flora (CRD #2524814, Registered Representative, Ocean City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Flora consented to the described sanction and to the entry of findings that he obtained a \$36,011.74 check issued to a beneficiary from an insurance company affiliated with his member firm, negotiated it, and deposited it into his personal bank account without the knowledge or consent of the actual payee. The findings also stated that Flora caused the address of record for a variable

annuity contract owned by public customers to be changed to his own residential address without the knowledge or authorization of the customers; submitted a falsified document bearing the purported signatures of the customers that requested a \$70,000 partial withdrawal from their annuity contract; and negotiated a \$70,000 check issued to one of the customers and deposited it into his personal bank account without the customer's knowledge or consent. In addition, NASD found that Flora submitted a falsified document bearing the purported signatures of public customers that requested a \$25,000 partial withdrawal from their annuity contract without their knowledge or authorization, and negotiated a \$25,000 check issued to one of the customers and deposited it in his personal bank account without the customer's knowledge or consent. (NASD Case #C9A020044)

**Kyle Patrick Frankel (CRD #3034895, Registered Representative, Phoenix, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that, without the prior knowledge or authorization of a public customer, Frankel filled out an application for life insurance for the customer, signed the customer's name to it, and submitted the application to his member firm's affiliated company. (NASD Case #C3A020034)

**William John Friess (CRD #814694, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 15 business days. Without admitting or denying the allegations, Friess consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner that was reasonably designed to achieve compliance with certain NASD and SEC rules.

Friess' suspension began December 2, 2002, and will conclude at the close of business December 20, 2002. (NASD Case #C02020053)

**Coleen Marie Garay (CRD #2611350, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in a registered principal capacity for 30 days. The fine must be paid before Garay reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Garay consented to the described sanctions and to the entry of findings that, as her member firm's compliance director, she failed to implement adequate written supervisory procedures to identify steps to achieve compliance with Section 10(b) of the Securities Exchange Act of 1934 and Regulation M, failed to designate a person responsible for taking those steps, and failed to identify how compliance with the procedures would be evidenced.

Garay's suspension began November 18, 2002, and will conclude at the close of business December 17, 2002. (NASD Case #CAF020050)

**Jack Charles Gerwin, Jr. (CRD #829845, Registered Representative, Bloomfield Hills, Michigan)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Gerwin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gerwin consented to the described sanctions and to the entry of findings that he willfully failed to disclose, amend, or cause to have amended his Form U-4 to disclose material facts.

Gerwin's suspension began November 18, 2002, and will conclude at the close of business February 17, 2003. (NASD Case #C8A020038)

**David Lawrence Gillotti (CRD #1389275, Registered Representative, Baltimore, Maryland)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay disgorgement of \$1,000, plus interest, in commissions in partial restitution to a public customer. Gillotti must pay the restitution before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gillotti consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to provide written notice to, and obtain approval from, his member firm. The findings also stated that Gillotti failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9A020029)

**Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, Greenwald consented to the described sanctions and to the entry of findings that he failed to establish and maintain written supervisory procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules relating to investment banking and trading on behalf of his member firm. The findings also stated that Greenwald's member firm's written supervisory procedures failed to specify the procedures that the firm's senior management was to follow to discharge supervisory responsibilities, and there were no systems or procedures in place to allow the Head Trader or anyone to become aware of potential red flags that the firm was engaged in a continuing distribution.

Greenwald's suspension began December 2, 2002, and will conclude at the close of business December 31, 2002. (NASD Case #CAF020007)

**Philip Dee Hart (CRD #2246252, Registered Representative, Ottawa, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hart reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions, and failed and neglected to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The findings also stated that Hart failed and neglected to provide prompt written notice to his member firm of his outside business activities. NASD also found that Hart participated in the public offering of securities prior to filing with NASD's Corporate Financing Department the documents and information required. In addition, the findings stated that Hart failed to file the offering with NASD to ensure that the terms and arrangements of the offering were in compliance with the Conflicts of Interest Rule when the proceeds of the offering were to be used to form a broker/dealer and become a member, and failed to conduct the offering as if the issuer had been a member prior to the commencement of the offering.

Hart's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C8A020074)

**Marcus M. Honio (CRD #4142035, Registered Representative, Boca Raton, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Honio willfully failed to disclose material facts on his Form U-4. (NASD Case #C07020045)

**Arlie Ray Horn, Jr. (CRD #1471308, Registered Representative, Woodlands, Texas) and Lindsay Alan Byrum (CRD #1263551, Registered Representative, Houston, Texas)** were each fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities. The sanctions were based on findings that Horn and Byrum engaged in private securities transactions and failed to provide prior written notice to, and receive permission from, their member firm to engage in such transactions.

Horn and Byrum's suspensions began November 4, 2002, and will conclude May 4, 2003. (NASD Case #C06010025)

**Virginia Jenkins (CRD #2815794, Registered Representative, Waynesboro, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jenkins consented to the described sanction and to the entry of findings that she converted \$221,000 from bank customers. (NASD Case #C07020085)

**Michael Kim Kalmaer (CRD #2610334, Registered Representative, New York, New York)** was fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, and required to complete the Regulatory Element of Continuing Education annually for four years after he re-enters the securities industry. The sanctions were based on findings that Kalmaer willfully failed to disclose material facts on his Form U-4.

Kalmaer's suspension began November 18, 2002, and concluded at the close of business December 3, 2002. (NASD Case #C9B020016)

**David Bryan Kalt (CRD #2031370, Registered Representative, South Charleston, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kalt consented to the described sanction and to the entry of findings that he effected transactions in the Individual Retirement Account (IRA) of a public customer without the customer's prior knowledge or authorization. The findings also stated that Kalt engaged in excessive and unsuitable trading in the customer's account in that the transactions he effected were excessive in volume and frequency based on the customer's age, her employment status, her financial circumstances, the character and nature of the account, and other considerations. (NASD Case #C9A020047)

**Alan Shawn Kiedaisch (aka Alan West Kiedaisch, West Alan Kiedaisch, West Shawn Kiedaisch, Shawn A. Kiedaisch, and Shawn Barratt) (CRD #4282821, Associated Person, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kiedaisch willfully failed to disclose material information on his Form U-4. The findings also stated that Kiedaisch failed to respond to NASD requests for information. (NASD Case #C10020054)

**Vasiliy Kouznetsov (CRD #4163388, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kouznetsov consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony. (NASD Case #CMS020190)

**Anthony Gerald Mannuzza, Jr. (CRD #2182639, Registered Representative, Fairton, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mannuzza consented to the described sanction and to the entry of findings that he converted \$627,355 from his member firm's customers by falsely representing to them that he would use their funds to purchase mutual funds on their behalf. The findings stated that Mannuzza caused the customer funds to be deposited into his

personal bank accounts, and then withdrew the proceeds for his personal use without customer consent or authority. (NASD Case #C9B020070)

**Robert Miragliotta (CRD #2443610, Registered Representative, Clark, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Miragliotta reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Miragliotta consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notification to his member firm. The findings also stated that Miragliotta willfully failed to amend his Form U-4 to disclose a material fact while associated with a member firm.

Miragliotta's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C9B020079)

**Jeffrey Lavert Montgomery (CRD #2701770, Registered Representative, Milwaukee, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Montgomery misused customer funds and failed to respond to NASD requests for information. (NASD Case #C8A020023)

**Scott Lowell Nattenberg (CRD #2444899, Registered Principal, Ewa Beach, Hawaii)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nattenberg consented to the described sanction and to the entry of findings that he obtained a cashiers check for \$100,000 for investment purposes from a public customer, deposited the check into a securities account under his control, and used the funds for his personal benefit to the exclusion of the customer. (NASD Case #C01020018)

**Anthony Oh (CRD #4460103, Associated Person, Avon, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Oh consented to the described sanction and to the entry of findings that he improperly obtained \$392.50 from his employer by submitting an expense report that overstated his actual expenses. (NASD Case #C11020041)

**Kevin Jay Palan (CRD #1734423, Registered Representative, Belle Mead, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palan consented to the described sanction and to the entry of findings that he effected transactions in the accounts of a public customer without the

customer's prior authorization. The findings also stated that Palan engaged in unsuitable trading in the accounts of a public customer in that the transactions he effected were excessive in volume and frequency based on the customer's personal circumstances, his investment objectives, and the character and nature of the accounts. (NASD Case #C9A020050)

**Ameeta J. Patel (CRD #4375920, Associated Person, London, United Kingdom)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 31 days. Without admitting or denying the allegations, Patel consented to the described sanctions and to the entry of findings that she was in possession of unauthorized materials during a general securities representative Series 7 qualification exam.

Patel's suspension began December 2, 2002, and will conclude January 1, 2003. (NASD Case #C10020106)

**Edward Walter Planche (CRD #4400866, Associated Person, Arlington, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Planche consented to the described sanction and to the entry of findings that, in order to deceive a member firm's personnel, he presented a document that purported to indicate he received a passing score on a general securities representative Series 7 exam when, in fact, he had received a failing score on the exam. The findings also stated that Planche failed to respond to NASD requests to appear and provide testimony at an on-the-record interview. (NASD Case #C10020105)

**Jennifer Marie Resil (CRD #4190629, Registered Representative, Edison, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Resil consented to the described sanction and to the entry of findings that she withdrew \$14,969.68 from a public customer's retirement account, had a check issued in the customer's name, and attempted to convert the proceeds of the withdrawal for her personal use without permission or authority of the customer. NASD also found that the member firm check, containing a forgery of the customer's endorsement and Resil's signature, was later presented to a bank for deposit. (NASD Case #C9B020081)

**Stephen Gerald Roehrig (CRD #2826376, Registered Representative, Rochester, New York)** and **Mark James Palazzo (CRD #1221009, Registered Principal, Pittsford, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Roehrig was suspended from association with any NASD member in any capacity for 10 business days and Palazzo was fined \$10,000 and suspended from association in any principal or supervisory capacity for 10 business days. In light of the financial status of Roehrig, a fine of \$1,000 has



been imposed. In lieu of payment of the fine to NASD, Roehrig and Palazzo were ordered to make partial restitution to a public customer by paying the full amount of their fines to the customer or the customer's estate. Roehrig and Palazzo must provide proof of full payment of the restitution to NASD within 30 days or they will be suspended from association with any NASD member in any capacity until proof of payment has been provided. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Roehrig recommended and effected transactions in the account of a public customer without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. The findings also stated that Palazzo failed to supervise Roehrig adequately in that he knew, or reasonably should have known, that such transactions were not suitable for the customer.

Roehrig's suspension began December 2, 2002, and concluded at the close of business December 13, 2002. Palazzo's suspension began December 2, 2002, and concluded at the close of business December 13, 2002. **(NASD Case #C8B020024)**

**Christopher George Romani (CRD #2590681, Registered Representative, Savage, Minnesota)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Romani converted, for his own use and benefit, public customer funds totaling \$38,140.97 without the knowledge or consent of the customers. In addition, Romani improperly used customer funds totaling \$18,159.43 in that he obtained loans from the insurance policies held by customers and applied the funds as a credit to other customer policy loans. Romani also failed to respond to NASD requests for information. **(NASD Case #C04020013)**

**Amy Shui (CRD #707519, Registered Representative, Long Branch, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shui consented to the described sanction and to the entry of findings that she effected transactions in public customers' accounts without the customers' prior knowledge, authorization, or consent. NASD also found that, without the knowledge or approval of her member firm, Shui paid customers \$10,000 in exchange for the customers' agreement not to file an arbitration statement of claim against her. **(NASD Case #C9B020080)**

**Arnold Robert Sinko (CRD #4408383, Registered Representative, Strongsville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Sinko willfully failed to disclose a material fact on his Form U-4. **(NASD Case #C8B020023)**

**Jeffery Scott Sloan (CRD #1845998, Registered Representative, Belle Mead, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, required to pay \$40,410 in disgorgement of commissions in partial restitution to public customers, and suspended from association with any NASD member in any capacity for six months. The fine and restitution amount must be paid before Sloan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sloan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firms, in that he effected various promissory note transactions.

Sloan's suspension began November 18, 2002, and will conclude May 17, 2003. **(NASD Case #C9B020076)**

**Thomas Avery Smith (CRD #1134969, Registered Principal, Owensboro, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he executed an unauthorized purchase of shares of a mutual fund in the trust account of a public customer without the account trustee's knowledge or consent.

Smith's suspension began November 18, 2002, and concluded at the close of business November 27, 2002. **(NASD Case #C05020051)**

**David Wayne Steele (CRD #1628075, Registered Representative, Piqua, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$42,109.49, including disgorgement of \$37,109.49 in commissions received, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Steele reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions and his role therein, and to receive permission from his firm to engage in the transactions.

Steele's suspension began November 4, 2002, and will conclude at the close of business May 15, 2003. **(NASD Case #C8B020021)**

**Joseph Philip Stelweck (CRD #2022057, Registered Representative, Cherry Hill, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without

admitting or denying the allegations, Stelweck consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04020037)

**Gary Earl Stevens (CRD #862409, Registered Representative, Rochester, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stevens consented to the described sanction and to the entry of findings that he entered into a General Release with a public customer to resolve issues surrounding funds Stevens had received from the customer, and entered into a Confidentiality Agreement with the customer to prevent the customer from disclosing information about a settlement to any person or entity, including his member firms and regulatory authorities. The findings also stated that Stevens failed to disclose his receipt of funds from the customer to his member firms, and failed to tell the firms about settling a complaint with the customer away from the firms. (NASD Case #C8B020025)

**John Patrick Sullivan, Jr. (CRD #2223824, Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he promised a public customer that, for a one-month period, he would guarantee her against any loss in the value of her shares of a stock if she agreed not to sell those shares.

Sullivan's suspension began December 2, 2002, and will conclude at the close of business December 30, 2002. (NASD Case #C11020042)

**Douglas Keith Throneburg (CRD #2515160, Registered Representative, Bloomington, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam following the suspension before acting in the securities industry in any capacity. Throneburg must pay the fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Throneburg consented to the described sanctions and to the entry of findings that he made misrepresentations to public customers in his recommendations and sale of long-term callable certificates of deposit (CDs) to public customers. The findings also stated that Throneburg described the investments as one-year callable CDs when, in fact, the CDs matured in 10, 15, or 20 years and could only be called at the end of the first year if the issuing bank chose to do so. In addition, NASD found that if the customer wanted a return of principal at the one-year point, and

the investment was not called, the customer would be required to sell the CD on the secondary market and incur a significant risk of loss of principal.

Throneburg's suspension began November 18, 2002, and will conclude at the close of business November 17, 2003. (NASD Case #CAF020049)

**Nikolas John Tries (CRD #2984407, Registered Representative, Milwaukee, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tries misappropriated his member firm's funds and failed to respond to NASD requests for information. (NASD Case #C8A020037)

**Steven Gary Walder (CRD #1865103, Registered Representative, Roslyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to pay \$6,365, plus interest, in restitution to member firms. The fine must be paid before Walder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Walder consented to the described sanctions and to the entry of findings that he entered priced limit orders in NASDAQ securities through his member firm's terminals in order to improve the National Best Bid or Offer (NBBO) in such securities, and after having entered such orders in electronic communication networks, Walder entered, via the Internet, orders to buy and sell shares of such securities in his personal account. The findings also stated that Walder knew that the orders placed in his personal account would be routed to market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO. NASD determined that by this course of conduct Walder was able, in his personal account, to buy shares of these securities at prices that were lower, and then sell the shares at prices that were higher than he would otherwise have been able to obtain, but for his entry of the NBBO improving orders into electronic communication networks. Furthermore, the findings stated that, within a short time after Walder received the executions of the orders that he had placed in his personal account, he cancelled 18 of the 20 priced limit orders that he had placed into the networks, thereby securing a profit of approximately \$6,365.50.

Walder's suspension began November 18, 2002, and will conclude at the close of business November 17, 2003. (NASD Case #CMS020199)

**Stephen Robert Walling (CRD #2265946, Registered Representative, Jackson, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Walling engaged in unauthorized trading in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In

addition, Walling failed to respond to NASD requests for information. (NASD Case #C9B020039)

**George Charles Wilkinson, Sr. (CRD #2411651, Registered Representative, Boardman, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Wilkinson, no monetary sanctions have been imposed. Without admitting or denying the allegations, Wilkinson consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Wilkinson's suspension began November 4, 2002, and will conclude at the close of business February 3, 2003. (NASD Case #C8B020020)

**Vaughn Lee Woods (CRD #853692, Registered Principal, La Jolla, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Woods consented to the described sanctions and to the entry of findings that he recommended purchases, plus related sales, of certain general equity securities in the retirement accounts of public customers and, because certain regulations governing the retirement accounts prohibit investments in any general equity securities, the transactions underlying the recommendations were impermissible and therefore not suitable for these types of retirement accounts.

Woods' suspension began December 2, 2002, and concluded at the close of business December 13, 2002. (NASD Case #C02020052)

**Irina Yunayeva (CRD #3225768, Registered Representative, Rego Park, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Yunayeva had imposters take the Series 6 and Series 63 qualification exams on her behalf. The findings also stated that Yunayeva attempted to have an imposter take the Series 7 qualification exams on her behalf. (NASD Case #C10020046)

## Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions

regarding the allegations in the complaint.

**Kenneth Ray Bell (CRD #2191634, Registered Representative, Memphis, Tennessee)** was named as a respondent in an NASD complaint alleging that he effected unauthorized sales and cash withdrawals totaling \$124,900 from a variable annuity belonging to a public customer, and converted the funds to his own use and benefit without the knowledge or consent of the customer. (NASD Case #C05020053)

**Donner Corporation International n/k/a National Capital Securities, Inc. (CRD #37702, Oklahoma City, Oklahoma), Jeffrey Lyle Baclet (CRD #2022409, Registered Principal, Santa Ana, California), Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California), and Paul Alan Runyon (CRD #3159920, Registered Representative, Lake Forest, California)** were named as respondents in an NASD complaint alleging that the firm, acting through Baclet and Uberti, intentionally or recklessly prepared and disseminated research reports on reporting companies that included fraudulent, exaggerated, and unwarranted claims, and failed to disclose material information regarding the true financial condition of the companies and the "going concern" opinion of the auditor. The complaint also alleges that the firm, acting through Baclet and Uberti, failed to provide in the research reports any reasonable basis for recommendations, and to explain the recommendations in light of the going concern opinions included in auditor reports and the underlying financial conditions of the companies. In addition, the complaint alleges that the firm, Baclet, and Uberti directly or indirectly employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon persons in connection with the purchase or sale of securities.

NASD also alleges that the firm, Baclet, and Uberti failed to disclose in the research reports the compensation the firm received for the preparation and dissemination of the research reports. Moreover, the complaint alleges that the firm, acting through Baclet, failed to obtain the signature or initials of a principal of the firm indicating approval of the research reports it disseminated, and failed to establish or maintain written procedures to supervise the preparation and dissemination of research reports reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Furthermore, the complaint alleges that Uberti and Runyon issued a research report with a speculative buy recommendation for a common stock and failed to disclose material information that an auditor had issued a going concern opinion for the stock and the financial information about the stock that made communications with the public misleading. NASD also alleges that Uberti and Runyon exaggerated the market potential for

companies issuing common stock and ignored specific facts, causing the research report to be misleading. The complaint also alleges that Uberti and Runyon directly or indirectly employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon persons in connection with the purchase or sale of securities. Furthermore, the complaint alleges that Uberti and Runyon failed to disclose the existence of "going concern" opinions in research reports, failed to disclose the underlying basis cited by the auditor for the "going concern" opinions, failed to disclose the true financial condition of the companies and other material information, and made exaggerated, false, and misleading statements about companies in research reports. (NASD Case #CAF020048)

**Thomas Charles Green (CRD #228650, Registered Principal, Sherman Oaks, California)** was named as a respondent in an NASD complaint alleging that he engaged in manipulative, deceptive, or fraudulent conduct by intentionally or recklessly causing to be executed and reported to The NASDAQ Stock Market, Inc., last-sale reports of transactions in a common stock, at or near the close of the market, for the purpose of affecting the reported closing last-sale price in the security. The complaint alleges that, as a result, all of the transactions represented the closing last-sale price for the stock, and were reported at a price higher than the price of the last preceding trade in the stock reported to The NASDAQ Stock Market, Inc.; or were the only trade of the day in the stock and were reported at a price higher than the prevailing inside bid by between approximately \$0.125 and \$1 for the days upon which the transactions were effected. In addition, the complaint alleges that Green had an interest in having the stock perform well financially because of the substantial positions in the stock held by him, his member firm, and its customers. (NASD Case #CMS020169)

**Heriberto Marrero (CRD #1696583, Registered Representative, Ft. Lauderdale, Florida)** was named as a respondent in an NASD complaint alleging that he converted funds totaling \$44,093.35 to his own use from the bank accounts of public customers without their authorization by preparing or altering debit and credit memos containing forged customer signatures. The complaint also alleges that Marrero failed to respond to NASD requests for information. (NASD Case #C07020086)

**Herbert Mario Miller (CRD #1394124, Registered Representative, Grand Island, New York)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$70,892.90 from public customers, failed to apply the funds as intended or in any other manner for the benefit of the customers, and, instead, used the funds for his

own benefit. The complaint also alleges that Miller failed to respond to NASD requests for information. (NASD Case #C8B020022)

**Michael John Price (CRD #1723203, Registered Representative, Atlanta, Georgia)** was named as a respondent in an NASD complaint alleging that he effected unauthorized trades in the account of a public customer. (NASD Case #C07020081)

**Nima Taherian (CRD #3258193, Registered Principal, Ferndale, Michigan)** was named as a respondent in an NASD complaint alleging that he engaged in a scheme to purchase and sell securities in the form of put and call options in his cash and margin accounts at his member firm, without having the ability or intent to pay for the purchases. The complaint alleges that Taherian made a practice of effecting transactions in his cash account whereby the cost of the securities purchased was met by the sale of the same securities, and caused his member firm to defer the deposit of cash and securities beyond the time when such transactions would normally be settled or to meet the margin requirements by the liquidation of securities in his margin account. The complaint also alleges that Taherian intentionally or recklessly misrepresented or omitted material facts to his member firm that he could not or did not intend to pay for his securities transactions, thereby causing his firm to unwittingly assume the risk of his trading activities. (NASD Case #C06020019)

## **Firm Suspended Pursuant to NASD Rule 9530 Series for Failure to Pay Dues, Fees, or Other Charges**

The date the registration was suspended is included after the entry. If the firm has complied, the listing also includes the date the suspension was lifted.

**J.E. Liss & Company, Inc. d/b/a  
Liss Financial Services,  
Milwaukee, Wisconsin  
(November 7, 2002)**

## **Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)**

**Bari, Jr., James L.  
Woodhaven, New York  
(October 31, 2002)**

**Boedigheimer, David W.**  
Morris, Illinois  
(October 31, 2002)

**Bongiorno, Gaspare**  
Glendale, New York  
(October 21, 2002)

**Boockmeier, James T.**  
Marble Falls, Texas  
(October 11, 2002)

**Cassuto, David I.**  
Lido Beach, New York  
(October 24, 2002)

Cassuto has appealed this action to the SEC, and the bar has not been stayed pending consideration of the appeal. (NASD Case #8210-10020007)

**Finkel, David Solomon**  
West Hempstead, New York  
(October 31, 2002)

**Ford, Ralph**  
White Pigeon, Michigan  
(October 16, 2002)

**Frankovich, Jason**  
Staten Island, New York  
(October 11, 2002)

**Morgan, Leslie E.**  
Converse, Texas  
(October 21, 2002)

**Noor, Danoo**  
Rego Park, New York  
(October 9, 2002)

**Shuey, III, Robert A.**  
Dallas, Texas  
(October 31, 2002)

**Speights, Sharon**  
Toledo, Ohio  
(October 22, 2002)

**Tambke, Theodore**  
New York, New York  
(October 31, 2002)

**Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)**

**Auten, Opie**  
Fort Worth, Texas  
(October 9, 2002)

**Bealman, Vicki D.**  
Virginia Beach, Virginia  
(October 10, 2002)

**Brocail, Scott E.**  
Springdale, Arkansas  
(October 16, 2002)

**Chanin, Jay E.**  
Cherry Hill, New Jersey  
(October 22, 2002)

**Lemieux, Charles J.**  
Levittown, New York  
(October 31, 2002)

**Lively, Billy Don**  
North Little Rock, Arkansas  
(October 16, 2002)

**Manning, Cathey D.**  
Grand Rapids, Michigan  
(October 16, 2002)

**Neiswender, John**  
Scottsdale, Arizona  
(October 31, 2002)

**Peres, Ayax Manuel**  
Vallejo, California  
(October 9, 2002)

**Pero, Belinda**  
Yantic, Connecticut  
(October 16, 2002)

**Rutland, Chris H.**  
Payson, Arizona  
(October 2, 2002)

**Scott, James L.**  
Gardnerville, Nevada  
(October 10, 2002)

**Sherr, Samuel**  
Brooklyn, New York  
(October 23, 2002)

**Smith, Gabriele**  
Yonkers, New York  
(October 17, 2002)

## **Individuals Whose Registrations Were Revoked for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320**

**Aleshire, Ellen M.**  
Antioch, Illinois  
(October 18, 2002)

**Dabney, Michael**  
Plainsboro, New Jersey  
(October 18, 2002)

**Grossman, Gerald M.**  
Bakersfield, California  
(October 18, 2002)

**Hanson, Roger A.**  
Milwaukee, Wisconsin  
(October 18, 2002)

## **NASD's NAC Upheld Previous Decision; Fraudulent Manipulation and Illegal Short Sales Result in Expulsion of Fiero Bros., Bar of John Fiero, and Fine of \$1 Million**

NASD announced that its National Adjudicatory Council (NAC) affirmed an NASD Hearing Panel's decision that John Fiero and Fiero Brothers, Inc., of New York, NY, violated NASD and federal securities antifraud laws when they colluded to manipulate the market for several small cap securities through a massive short-selling campaign. The NAC also found that Mr. Fiero and Fiero Brothers violated NASD affirmative determination requirements by executing numerous short sales without having determined that they could borrow the securities or otherwise provide for delivery. The NAC fined John Fiero and Fiero Brothers \$1 million, barred Mr. Fiero in all capacities, and expelled Fiero Brothers from membership.

The NAC determined that John Fiero and Fiero Brothers participated in a "bear raid," a coordinated, manipulative action in which short selling is used to drive down the price of a security by creating a false imbalance of sell-side interest. Fiero

and Fiero Brothers engaged in a manipulation and deception that "violated public trust and jeopardized market integrity," according to the decision.

Specifically, John Fiero and the firm intentionally drove down the prices of several small cap securities by amassing sizeable short positions in those securities with the aim of demonstrating a large demand to sell the securities. The underwriter of the manipulated securities, who held large proprietary positions in the securities, was coerced to sell Fiero Brothers blocks of the manipulated securities at deeply discounted prices. Mr. Fiero used the discounted securities to cover the firm's short positions at a sizeable profit and sold the remaining securities to other short sellers to cover their short positions, thereby generating significant profits for them and additional profits for Fiero Brothers.

The NAC also found that Fiero Brothers, after covering its short positions, commenced a second wave of illegal short selling in the same securities that eventually drove Hanover Sterling & Co., Inc., the underwriter of the securities, out of business, and led to the bankruptcy of its clearing firm, Adler Coleman Clearing Corp.

A key aspect of Mr. Fiero and Fiero Brothers' manipulative conduct was its violation of NASD's affirmative determination rule. The affirmative determination rule requires a securities firm to determine, prior to selling a stock short, that it can borrow securities or provide for delivery by settlement date before effecting a short sale of the securities. The rule prevents short selling by those who do not have, and have no intention of delivering, the stock that they are selling. The NAC found that, over the course of two months and in connection with Fiero Brothers' short sales of the manipulated securities, Mr. Fiero and the firm violated NASD's affirmative determination rule in a number of instances.

The NAC concluded that, as a result of John Fiero and Fiero Brothers' manipulative conduct, they intentionally injected into the marketplace inaccurate information regarding the level of interest in the manipulated securities because it was the concerted efforts of Mr. Fiero and Fiero Brothers and not the free forces of supply and demand that created the appearance in the marketplace of a massive selling effort.

The NAC is a 14-person committee composed of seven industry and seven non-industry members that decides appeals from disciplinary, membership, and exemption decisions; rules on statutory disqualification applications; and advises on other policy matters. Before John Fiero and Fiero Brothers appealed this case to the NAC, an NASD Hearing Panel heard the matter. A Hearing Panel consists of an NASD Hearing Officer along with two members of the securities industry.

## **NASD Fines and Suspends Research Analyst for Misusing Confidential Information Obtained in Clinical Drug Trial; Sterling Financial and Others Also Sanctioned for Misleading and Inaccurate Research Reports**

NASD has fined and suspended David Risk, a research analyst, and his brother, Doug Risk, a research associate, both formerly employed by Sterling Financial Investment Group of Boca Raton, FL. The Risk brothers violated NASD rules in connection with their gathering and use of confidential information in a research report relating to ongoing clinical trials for a new sleep medication. Sterling was also fined and Steven Kirsch, the head of Sterling's research department, was fined and suspended.

David Risk was suspended for eight months and fined \$35,000. Doug Risk was suspended for five months and fined \$5,000. Sterling was fined \$40,000 and was ordered to retain an outside consultant to review the firm's policies and procedures concerning its research department. Kirsch was fined \$10,000 and suspended as a principal and supervisor for 30 days.

NASD found that David Risk and Doug Risk violated NASD rules in obtaining information about Neurocrine Biosciences, Inc., a company David Risk was researching for Sterling. In early February 2002, David Risk made an appointment at a clinic performing clinical trials of a medication to treat insomnia being developed by Neurocrine. On the day of the appointment, David Risk directed his brother, who was then acting as his assistant, to go to the clinic and portray himself as David Risk. Doug Risk did so and represented himself as David Risk, signed documents in the name of his brother, and completed a physical examination in the name of David Risk.

Doug Risk wrote David Risk's name on a registration sheet at the clinic that contained a confidentiality agreement. The agreement required that signatories not divulge the name of any patient or family participating in any clinic program. The statement further required him to keep any and all treatment information concerning patients or their families "in the strictest confidence."

In the course of portraying himself as his brother, Doug Risk obtained information, including confidential information, about the medication being studied and the clinical trials. This included information obtained from a questionable source with no personal knowledge of the events about a patient who allegedly could not be roused after taking the medication being tested on behalf of Neurocrine.

Despite the existence of the confidentiality agreement, Doug Risk told his brother what he learned at the clinic. David Risk did nothing to verify the accuracy of the information and included it in a research report he co-wrote about Neurocrine, which was issued to customers and potential customers of Sterling on February 20, 2002. The report contained other material written by David Risk that was inaccurate or misleading. David and Doug Risk were also charged with violating NASD rules by failing to advise Sterling, in writing, of accounts they had at other firms. Doug Risk made trades in one of those accounts, including trades in stocks Sterling was following, without notifying Sterling of the trades.

Sterling was fined for having inadequate training and written supervisory procedures for its research department. Sterling and Kirsch were sanctioned for failure to supervise the activities of the firm's research department and research analysts. Actual supervision of the research department was minimal, and there was inadequate review of the activities of the analysts and department staff. In settling this case, the respondents neither admitted nor denied the findings made by NASD.

Neurocrine Biosciences, Inc., had no involvement in any of the misconduct that is the subject of this enforcement action.